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Court battle expected over Central Valley levee vegetation

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Controversial federal rules that could require nearly every tree and bush to be chopped down from Central Valley levees are likely headed for a court battle.

On Tuesday, Sacramento-based environmental group Friends of the River and another group, Defenders of Wildlife, notified the U.S. Army Corps of Engineers they intend to file a lawsuit against the rules.

The 60-day notice is required under the Endangered Species Act. The groups also plan to sue under another statute that requires federal agencies to consult each other to ensure their policies don't harm the environment.

Bob Wright, senior counsel at Friends of the River, said the Corps failed to consult federal wildlife agencies before imposing the rules nationally in 2007. It also failed, he said, to study the environmental consequences, as required by the Endangered Species Act.

The Central Valley today has only about 5 percent of its historic riparian habitat. Most of that, Wright said, is thanks to the trees and shrubs that grow on more than 1,600 miles of levees in the region.

"If you take that away, that's just the last nails in the coffin for a number of endangered species," he said. "Also there's the aesthetic impacts of turning beautiful, tree-lined rivers into something that looks like an ugly, barren drainage ditch. We just can't let this happen."

The Corps had no comment on the announcement. But previously it noted the rules are not yet final, and environmental studies could still ensue.

The Corps certifies the flood safety of major levee systems. Its maintenance policy allows only short grass on levees. The belief is that tree roots weaken levees, and that dense vegetation may hide leaks.

Though the rules have been in place for years, the Corps allowed California to operate under its own maintenance standards, which actually encourage tree planting. Even the Corps included trees on many of its own levee projects in the state.

In 2007, the Corps began imposing its national policy uniformly.

While the rules do not state that trees and other vegetation must be cut down, that is the practical effect. Failure to comply would make local agencies ineligible for federal aid after a flood.

The Corps later granted the Central Valley a reprieve from the rules until 2012 while a regional exemption is prepared. But the exemption will be subject to a Corps veto and won't cover other areas of the state.

Numerous other government agencies are on record opposing the rules, including the California Department of Water Resources, which oversees flood safety at the state level. The department reported last year, based on aerial surveys, that clearing vegetation from 1,600 miles of noncompliant California levees could cost \$7.5 billion.

The Center for Biological Diversity in August also filed a notice of intent to challenge the rules, but has not sued. Wright said that won't be the case this time.

"Absolutely, we do intend to follow up with a lawsuit," he said. "We are prepared. It's not just a letter."

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